

# Exhibit C

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002  
ANTITRUST LITIGATION 08-MDL-02002

PHILADELPHIA, PA

NOVEMBER 12, 2019

BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

TRANSCRIPT OF TRIAL PROCEEDINGS

DAY 7

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(Transcript produced by mechanical shorthand via C.A.T.)

1 pure statement that the numbers in later years are larger than  
2 numbers in the earlier years, correct?

3 A. According to USDA statistics.

4 Q. And you have no opinion on what those numbers would have  
5 been, absent the UEP Certified Program, correct?

6 A. I don't have any way of knowing what that would be.

7 (End of videotape.)

8 THE COURT: Okay, that is the conclusion of the  
9 Gregory deposition and testimony, and we will now take a lunch  
10 break, folks. It's just a couple of minutes before 1 o'clock.  
11 I'd like to get -- maybe get everybody back here by two and  
12 get started. Does that give you all enough time to get, you  
13 know, have your lunches with reasonable convenience? Great.  
14 So let's aim for 2 o'clock and as soon as everybody is back,  
15 we will resume. Meanwhile, just enjoy lunch. Don't chat  
16 about the case. And we will see you in about an hour.

17 THE DEPUTY CLERK: All rise.

18 (Jury out.)

19 THE COURT: Of course, I hope the hour is enough for  
20 you all, too. See you at two.

21 MR. PATTON: Your Honor?

22 THE COURT: Oh, yes.

23 MR. PATTON: Good afternoon. Douglas Patton. The  
24 next witness we intend to call is James Carlson, the gentleman  
25 who's going to authenticate the Rose Acre's videos and photos.

1 Last night his deposition was taken and it --  
2 everything's good, but I intend to play this video and five  
3 photos, and I'd like to know if I'm going to get an objection  
4 and when I start playing that video because it's not a  
5 manageable thing to do, so I'd like to know now while we have  
6 an hour.

7 THE COURT: And you're asking me?

8 MR. PATTON: No, I'm asking the other side -- well,  
9 I'm asking you if I can ask the other side.

10 THE COURT: Right there. There they are.

11 MR. LEVINE: Yes, we do have some -- we have  
12 objections to several of the scenes in the Rose Acre video.

13 MR. PATTON: So I would like to be able to work that  
14 out now within the Court's presence because we think there  
15 aren't problems with the video -- scenes in the video and I  
16 will not be able to change the video.

17 THE COURT: Well, do you know already what their  
18 objections are?

19 MR. PATTON: No.

20 THE COURT: I'll tell you what. How about if you  
21 all at least try and find out what your respective positions  
22 are, and I'll come back here in about 30 minutes.

23 MR. PATTON: Excellent. Thank you, Your Honor.

24 THE COURT: And those of you who have that issue to  
25 deal with can be here and the rest of you who are not

1 essential to that can enjoy the whole hour for lunch. I'll be  
2 back in a half hour.

3 MR. PATTON: If we resolve it, then we'll let you  
4 know.

5 THE COURT: Yes, don't let me be the last to know.  
6 Whatever, I'll be back in 30 minutes.

7 MR. BLECHMAN: Thank you.

8 THE COURT: Unless you don't need me. Go.

9 (Luncheon recess taken.)

10 (After luncheon recess at 1:30:)

11 THE COURT: Folks, don't worry. What can I do to  
12 help you?

13 MR. PATTON: Thank you, Your Honor.

14 THE COURT: No problem.

15 MR. PATTON: So I think we're down to a couple of  
16 general issues. The first one has to deal -- deals with video  
17 footage of the Rose Acre footage of pullet houses. So the  
18 concern there is, without going through the timeline of this,  
19 we have -- the Defendants have had this video with the pullet  
20 houses for three to four weeks. At the pretrial conference,  
21 there was a request that the captions be taken off the video,  
22 and what Mr. King said was, Okay, we're set. I think it's a  
23 waiver argument in the first instance because for the first  
24 time, and we would like to have heard something at least this  
25 morning or later, we haven't heard this pullet house

1 objection.

2 Pullet house is the house where the hens stay before  
3 they move into the layer house. During Mr. King's opening,  
4 behind the UEP chart, he presented a demonstrative that says,  
5 Stages of egg production.

6 THE COURT: Right.

7 MR. PATTON: I think he talked about pullets. And  
8 more importantly, and I'm happy to show Your Honor the 2010  
9 edition of the UEP Guidelines, if you would like to look at  
10 them, but the videos that we have of the -- that the witness  
11 took in the pullet house is of pullets. Pullets being put in  
12 transfer carts. Pullets being transferred to a layer  
13 facility. And the guidelines, as they apply, deal directly  
14 with pullets. And I'm happy to hand it to you, if you'd like.

15 THE COURT: I'm still waiting to find out what the  
16 problem is.

17 MR. PATTON: I -- we think they should be played,  
18 but the Defendants have objected to all footage of the pullet  
19 house. And there's not many videos of it, but handling and  
20 transportation. Pullets. Containers should be used for  
21 pullets. Pullets and hens must be -- catching of pullets and  
22 hens must be done in a manner that avoids crowding or piling  
23 in corners. Moving pullets and hens -- and I'm  
24 paraphrasing -- must be handled in methods that include, A,  
25 removing birds from cage one or two at a time. So pullets --

1 pullets under cage space, at the top: Numerous studies have  
2 shown decreasing space allowance.

3 Doesn't specify whether or not there's a difference  
4 between layer houses or pullets. There's no distinguishing  
5 between them in the guidelines and the guidelines are Animal  
6 Husbandry Guidelines.

7 THE COURT: Do you have still shots of what the  
8 video shows?

9 MR. PATTON: We do not have still shots but we can  
10 show you the videos.

11 THE COURT: Well, how about -- I'm still -- I'm  
12 still trying to figure out what the actual dispute is. Okay.  
13 Hold that thought. Don't go away.

14 MR. LEVINE: There's two categories, Your Honor.  
15 The first category is where the witness could not properly  
16 authenticate it as a film from a Rose Acre facility.

17 THE COURT: I thought the premise there is that  
18 these are films that this fellow took.

19 MR. PATTON: They are.

20 MR. LEVINE: They are.

21 THE COURT: He can't remember where he was.

22 MR. LEVINE: Yes, he went from Rose Acre to  
23 Rembrandt Enterprises, and when we deposed him last night and  
24 we went scene by scene in the proposed compilation, there were  
25 several of the scenes he could not confirm it was, in fact, a

1 Rose Acre facility. So we do not think those things have been  
2 properly authenticated and should be played to the jury.

3 With respect to the pullet issue that Mr. Patton  
4 raised, there are really two different issues. There are  
5 certain scenes that depict the transportation of the pullets  
6 to the layer facilities. We are not objecting to that because  
7 as Mr. Patton appropriately pointed out, the Certified Program  
8 does deal with the transportation and handling of pullets.

9 However, there are scenes of footage of just the  
10 general conditions of a pullet house, and the Certified  
11 Program does not deal with the general conditions of a pullet  
12 house. They deal with the general conditions of the layer  
13 facilities. So we believe it is both irrelevant and a 403 to  
14 show footage of, generally, the conditions in a pullet house  
15 that has no relevance to the argument that the certified  
16 guidelines was a pretext.

17 THE COURT: Let's deal with the -- what I think is  
18 the easier one, which is whether the witness authenticates the  
19 footage.

20 MR. PATTON: So, Your Honor, 901, simple standard is  
21 what it purports to be.

22 THE COURT: What I'm hearing is he doesn't know what  
23 it purports to be.

24 MR. PATTON: Not true.

25 THE COURT: It's a chicken farm.



1 MR. PATTON: So -- so --

2 THE COURT: And that's a little -- that's a little  
3 general, don't you think?

4 MR. PATTON: Well, first of all, 901 is a low  
5 standard. We have an affidavit that was provided from HSUS  
6 that says these are the videos that were taken at Rose Acre.  
7 They got that. Then they subpoenaed.

8 THE COURT: Okay, what is the witness's relationship  
9 to HSUS?

10 MR. PATTON: He was the investigator hired by HSUS.

11 THE COURT: Okay.

12 MR. PATTON: And he was retained by HSUS. The  
13 witness then went to a Rose Acre farm where they had three  
14 facilities. He testified in his deposition -- in his  
15 deposition last night, he took these videos and he took these  
16 photos. And it's surprising, but that he -- he remembered  
17 details such as scenes, cages, walls of henhouses, coworkers  
18 and names. What he was not able to do at times was, do you  
19 know what layer house you were in? And he said, I can't  
20 remember and I don't know.

21 Do you know what pullet house? Do you know if you  
22 were in a pullet or a layer house? He said at this point, I  
23 can't remember.

24 But we're here to authenticate a deposition --  
25 authenticate a video. We're here to authenticate photos and

1 he says he took them and he knows he took them. The issue of  
2 whether it was --

3 THE COURT: Well, leaving aside for a moment whether  
4 he knew he was -- whether he now recalls whether it was house  
5 A or house B, is he saying that it was a house at Rose Acre?

6 MR. PATTON: Yes. In most instances -- a couple of  
7 times. And I actually -- I won't say these were kind of  
8 tricky questions because he was being asked about Rose  
9 Acre-only videos, and in those instances where he got to say,  
10 well, as I sit here today, I -- he -- it could have been  
11 possible it was Rembrandt farm. I've taken those out because  
12 he was confused.

13 They played these scenes broken up not in  
14 continuation, and he got confused and I'll live with that.  
15 And I'm prepared to show the testimony. Yeah, I believe this  
16 was taken at Rose Acre Farms. I'm fairly confident that it's  
17 footage of my arms inspecting an injured bird and that would  
18 be Rose Acre. I mean --

19 THE COURT: And these videos were taken when?

20 MR. PATTON: In 2010.

21 THE COURT: Is that a question or -- you had that  
22 little range.

23 MR. PATTON: That's fine, that's fine.

24 THE COURT: Valley girl --

25 MR. PATTON: They were taken in 2010, Your Honor.

1           THE COURT: Okay. And is that when the guidelines  
2 are that you want to use?

3           MR. PATTON: I won't use the guidelines. I'm just  
4 pointing out that the guidelines are applicable at that time  
5 directly dealt with pullet house. My point, Your Honor, at  
6 this point, is this gentleman will testify and he's testified  
7 last night, he wore the camera, he was in Rose Acre. We have  
8 videos from February 5th to the 22nd when he was there.  
9 They've been produced by HSUS. And if they have questions  
10 about whether this was a layer house or a pullet house, which  
11 are several of their objections, that should go to weight.  
12 It's a simple standard. Is this a photo that you took? Is  
13 this a video that you took?

14           THE COURT: Okay, may I ask why is there a  
15 significance between pullet houses and other houses?

16           MR. LEVINE: Well, there are, but if I may --

17           THE COURT: Okay.

18           MR. LEVINE: It's almost easier to do this with a  
19 little bit of devils in the details. There are four scenes  
20 where he says he could not state with confidence, he wasn't  
21 sure that it was Rose Acre or Rembrandt. So this isn't a  
22 pullet versus a layer facility. This is whether it's Rose  
23 Acre and we believe --

24           THE COURT: That was the question I thought I was  
25 asking you.

1           MR. LEVINE: No, no, no, I understand, but  
2 Mr. Patton seemed to suggest that he could identify for all  
3 the scenes that they haven't taken out, and I don't believe  
4 that's correct. In terms of the pullet versus the layer, the  
5 issue really is they're trying to say that the Certified  
6 Program is a pretext for a supply reduction facility. The  
7 Certified Program, then, you should be able to show video of  
8 what the Certified Program applied to. It did not apply to  
9 the general conditions of a pullet house. It applied to the  
10 conditions in a layer facility.

11           The problem they have with this witness is he just  
12 spent more time in facilities that were not governed by the  
13 Certified -- the Certified Program. The Certified Program did  
14 govern the transportation and the video footage of the  
15 transportation we're not objecting to. It's just they have  
16 general, you know, footage of a layer house that is irrelevant  
17 to their argument.

18           THE COURT: What's the amount of time on this, this  
19 footage that's in dispute?

20           MR. PATTON: The entire footage, I think with some  
21 of our cuts that we've agreed to do and I've compromised, I  
22 think we're down to maybe five minutes, five and a half  
23 minutes.

24           THE COURT: Does that sound about right?

25           MR. LEVINE: Probably.

1 THE COURT: Okay. And he's going to be here, right?

2 MR. PATTON: And he will be here.

3 THE COURT: Okay. How much of the five minutes is  
4 devoted to pullets as opposed to layers?

5 MR. PATTON: Well, so --

6 MR. LEVINE: A lot.

7 MR. PATTON: It was complicated in the sense of the  
8 house.

9 THE COURT: It's only five minutes. How complicated  
10 can it be?

11 MR. PATTON: Well, the unloading of pullets and  
12 putting them in carts, which is clearly handling. I mean,  
13 look, the Animal Welfare Program, our view is this is -- this  
14 is -- the Animal Welfare Program was used as an overall  
15 justification, and it was promoted as the best thing since  
16 sliced bread. I get that part. They're not here. They're  
17 not here right now.

18 MR. PATTON: So I think we're cutting a little too  
19 finely because this is the life of a hen under their program.  
20 So the -- to answer that question, I'm trying to, because I  
21 don't actually know.

22 THE COURT: I'm hearing more and more like this is  
23 an inflammatory move as opposed to evidentiary.

24 MR. PATTON: No, it's not, Your Honor. There's  
25 several scenes of transport carts. I don't know how long they

1 take. So we have -- we have -- well, first, you've said  
2 you've withdrawn the --

3 MR. LEVINE: I've withdrawn -- we've withdrawn all  
4 the objections with respect to the transportation, so anything  
5 that deals with the car, we have it. I can give Your Honor  
6 the scene numbers we're objecting to, if that would help.

7 MR. PATTON: Well, you had told me before the break  
8 you had all these objections witnesses transporting the  
9 pullet.

10 MR. LEVINE: With respect to the transportation.

11 THE COURT: One at a time. Poor Ms. Feldman. She  
12 can't do this.

13 MR. LEVINE: All right. Would it be easier if I  
14 just went through --

15 THE COURT: Yes. It would. It actually would be  
16 easier if I actually saw what you guys were talking about.

17 MR. PATTON: We can play it.

18 THE COURT: Sure.

19 MR. PATTON: With the sound down.

20 (Video clip played.)

21 THE COURT: Now, what I'm seeing is what now is,  
22 after you've cut and --

23 MR. PATTON: No. We have to try to cut this before  
24 the witness comes on.

25 THE COURT: None of what you've discussed has been

1 removed, right?

2 MR. PATTON: Correct.

3 THE COURT: Okay.

4 MR. PATTON: But it is what we edited down per  
5 Your Honor's -- after Your Honor saw the first thing.

6 THE COURT: Okay.

7 (Video clip played.)

8 MR. PATTON: Those are pullets. Those are pullets.  
9 These are pullets being put in transport cages.

10 THE COURT: This part is not even visible. Whatever  
11 this is.

12 MR. PATTON: I don't think you have an objection to  
13 that.

14 MR. LEVINE: I could.

15 THE COURT: Well, no, I mean, I just said it wasn't  
16 visible. Maybe it was just my screen.

17 MR. PATTON: Your Honor, those are pullets being put  
18 in the layer houses. That's the layer house. Now they're  
19 being depopulated. And this basically ends, Your Honor, with  
20 the manure pits, and that's it.

21 THE COURT: It ends with what did you say?

22 MR. PATTON: Then there's just film of the manure  
23 pits, and that's the end of it.

24 (Video clip ends.)

25 MR. LEVINE: Your Honor --

1 THE COURT: Well, let me get a couple of facts here.  
2 Which of the Rose Acre facilities were these photos taken?

3 MR. PATTON: So they were at three facilities.

4 THE COURT: Which three?

5 MR. PATTON: There was a facility at Guthrie,  
6 Stewart and Winterset where he worked.

7 THE COURT: Okay, and they're all in 2010?

8 MR. PATTON: All in 2010.

9 THE COURT: Okay, and as I recall and what I've  
10 learned, pullets do not lay eggs --

11 MR. PATTON: Not until they --

12 THE COURT: -- while they are pullets?

13 MR. PATTON: That's correct.

14 THE COURT: Okay. Go ahead.

15 MR. LEVINE: So, I was just going to say, Plaintiffs  
16 have already agreed to delete scenes 12 and 30, but in  
17 addition to those, we believe scenes 32, 34, 35 and 39 could  
18 not be authenticated as being definitively from Rose Acre.

19 With respect to scenes 2, 3, 4, 15, 29, and the  
20 manure pit that's the back half of scene 49, they are --  
21 either didn't know whether that was a layer facility or pullet  
22 facility or definitively a pullet facility. The scenes that  
23 depicted the transportation, we've withdrawn our objections  
24 to.

25 THE COURT: Okay, run through the numbers of the



1 scenes for me, please. I wasn't writing it down as I was  
2 watching. The order that the video --

3 MR. LEVINE: If you want I have it. Scene 2.

4 THE COURT: Okay, go ahead.

5 MR. LEVINE: Scene 3.

6 THE COURT: Yes.

7 MR. LEVINE: Scene 4.

8 THE COURT: Yep.

9 MR. LEVINE: Again, scene 12, I believe they agreed  
10 to delete. Scene 15, scene 21, scene 22, scene 23, scene 27,  
11 scene 28, scene 29, scene 30, but again, I believe they agreed  
12 to delete that.

13 MR. PATTON: That's correct.

14 MR. LEVINE: Scene 31, scene 32, scene 33, scene 34,  
15 scene 35, scene 39. Scene 40, scene 41, and scene 42, and  
16 scene 49 had what looked like two parts, but it's not  
17 delineated in the video as such, but you'll notice it moves  
18 from a facility to the manure pit and our objection is from  
19 the manure pit part of it.

20 MR. PATTON: I think you maybe skipped 45.

21 MR. LEVINE: I'm sorry, did I?

22 MR. KING: 45.

23 MR. PATTON: 41 and 41A and 45.

24 MR. LEVINE: I don't have it on my list.

25 THE COURT: And to which do you have objections now?

1           MR. LEVINE: So with respect to the fact that he  
2 cannot tell definitively that it's Rose Acre, our objections  
3 are to scenes 32, 34, 35, and 39.

4           THE COURT: 32, 34, and 35, did you say?

5           MR. LEVINE: Yes.

6           THE COURT: And --

7           MR. LEVINE: And 39. With respect to the fact --

8           THE COURT: And you say that the witness has said  
9 he's not sure whether it's Rose Acre or Rembrandt?

10          MR. LEVINE: He couldn't say for sure.

11          THE COURT: As opposed to which is Rose Acre's?

12          MR. LEVINE: Exactly.

13          THE COURT: Okay, that ought to be -- I mean, can we  
14 not just sort of agree on what he doesn't know?

15          MR. PATTON: So the witness's examination went as he  
16 said, I'm -- I took this video. I recognized it. I'm highly  
17 confident this is at a Rose Acre facility. Is it possible --

18          THE COURT: Does he actually say, I'm highly  
19 confident?

20          MR. PATTON: In most instances, Your Honor. I don't  
21 want to be held to every time, but he would say that and then  
22 the question would be, Well, is it possible it would be a  
23 Rembrandt? And because it went so quick, in my opinion -- but  
24 all of these -- all of these videos are Rose Acre videos, so I  
25 really think it's not fair for this witness to be --

1           THE COURT: Okay, and you're saying that they're all  
2     Rose Acre because of the affidavit that you have?

3           MR. PATTON: And that they were subpoenaed and  
4     produced. The same video was produced. So after the  
5     affidavit and after these videos were produced, then  
6     Defendants served a subpoena on the Humane Society four weeks  
7     ago and asked for all of the raw footage, and they got back  
8     this same video that was part of the -- so now they've --  
9     they're authentic in that they were produced. And my point  
10    only on the witness is nine years later he's going like this.  
11    But we know he videoed it and he said --

12          THE COURT: Okay, I'm trying to get a sense of this.  
13    All right, so 32, 34, 35, and 39, the objection has to do with  
14    the argument that the witness is not, last night, rock solid  
15    as to whether it was Rose Acre or Rembrandt?

16          MR. LEVINE: Or in at least one instance whether he,  
17    in fact, took that video. If Your Honor wants, I can hand up  
18    the deposition and give you the page cites.

19          THE COURT: Let me just get an order of magnitude  
20    here.

21          MR. LEVINE: Sure.

22          THE COURT: Okay. What are your other objections as  
23    to other scenes?

24          MR. LEVINE: Okay, so -- so on scene 2, he's not  
25    certain it's a layer facility. Scene 3 is definitively a

1 pullet facility.

2 THE COURT: Three?

3 MR. LEVINE: And scene 4 is definitively a pullet  
4 facility.

5 THE COURT: Yes.

6 MR. LEVINE: Scene 15 he wasn't sure.

7 THE COURT: Not sure as to whether it was a layer --

8 MR. LEVINE: Whether it was a layer or a pullet.

9 Scene 29, he said it's maybe a layer but he couldn't  
10 say for sure. And, again, the manure pit that is the  
11 conclusion of this video, he says he couldn't say whether that  
12 was from a pullet facility or a layer facility.

13 THE COURT: Is there a difference?

14 MR. LEVINE: Again, it's certainly a difference in  
15 terms of the --

16 THE COURT: No, no, I mean --

17 MR. LEVINE: Oh, yes. How do I put it? Layer  
18 facilities are older -- are older hens that produce a  
19 different volume of manure than does a pullet. And so they  
20 are different, but, more importantly, the Certified Program  
21 does not --

22 THE COURT: No, I understand that point. There's  
23 no -- in other words, there's no way by just looking at this?

24 MR. LEVINE: There may be. There may be, but I  
25 couldn't represent to the Court right now whether there is or

1     there is not.

2                 THE COURT:   You're not an expert?

3                 MR. LEVINE:   Not yet.   I'm getting there.

4                 THE COURT:   Okay.   Are there -- do you have any  
5     other objections?

6                 MR. LEVINE:   No, I think that covers --

7                 THE COURT:   Okay.

8                 MR. PATTON:   Last point I'll make on the pullets,  
9     Your Honor, is, in fact, Gene Gregory said it today, the 100%  
10    rule says that they treat all hens the same.

11                MR. LEVINE:   All egg-laying hens, all the layers,  
12    not the pullets.

13                MR. BLECHMAN:  Your Honor, may I -- may I add  
14    something?

15                THE COURT:   Sure.

16                MR. BLECHMAN:  Just further to what Mr. Patton just  
17    said, there's been testimony in this trial, the Defendants'  
18    contention is that as a result of the 100% rule, there cannot  
19    be commingling between hens that are raising -- that have  
20    more -- cages with more hens in them so they're not under the  
21    Certified Program, and those that are not.   So the difference  
22    between certified and uncertified eggs, the Court has heard  
23    criticism by virtue of questions on cross-examination with the  
24    Sparboe witnesses about that.   It is the Plaintiffs' position  
25    that in addition to what Mr. Patton has said, that a measure

1 of the credibility, which the jury should be allowed to weigh,  
2 as to the legitimacy of the contention about the no  
3 commingling with regard to uncertified and certified hens that  
4 are being raised is whether these same -- a measure of the  
5 credibility of that contention as to whether it's really about  
6 animal welfare or is it about supply management is the fact  
7 that with regard to pullets, whether the Defendants treat  
8 pullets humanely as well. And assuming everything else --  
9 putting aside everything else that the Court has heard, if the  
10 Defendants are mistreating pullets, we suggest, it is our  
11 position that it is a measure of the weight of the evidence  
12 the jury's allowed to consider in deciding the legitimacy of  
13 the Defense contention whether they're actually truly  
14 interested in treating hens well because they have this  
15 uncertified and certified distinction or whether that's supply  
16 management. And what belies that contention we contend, in  
17 part, is, what's shown in the video of the mistreatment of  
18 pullets.

19 THE COURT: May I see the witness's comments about  
20 scene 32, 34, 35, and 39?

21 MR. LEVINE: May I approach?

22 THE COURT: Yes.

23 MR. LEVINE: With respect to scene 32, I believe  
24 Your Honor will find the deposition at page 77, lines 19  
25 through 21. It doesn't recognize that he took the video.

1 THE COURT: No, no, okay, just -- scene 32. Okay,  
2 what page is 34 on?

3 MR. LEVINE: 34 is on page 79, going over, I  
4 believe, on to 80.

5 THE COURT: And 35 follows right along on 80?

6 MR. LEVINE: Yes.

7 THE COURT: And then 39?

8 MR. LEVINE: Is on page 81 on to page 82.

9 THE COURT: Okay, on that particular issue, looking  
10 at scene 32, 34, 35, and 39. 32 is out, 34 is out. 35 and 39  
11 are in. Based on at least what I read here. Now, if the  
12 witness changes what he's going to say here on the stand, so  
13 be it.

14 Now, with respect to layers or pullets, the case  
15 involves whether or not there is supply management or  
16 mismanagement to affect prices. Supply of eggs, pullets don't  
17 lay eggs. So 2 can stay in. 3 is out, 4 is out. 15 can stay  
18 in, as can 29.

19 And it seems to me that there's enough repetition in  
20 what is shown in the remaining scenes that to the extent this  
21 also figures into the Court's ruling, I think there's some  
22 gratuitousness of just some of the repeat, the repeat frames,  
23 but you're left with quite a few.

24 MR. PATTON: Okay. We're going to --

25 THE COURT: Unless somebody can tell me that just by

1 looking at the birds you can tell that one looks like a pullet  
2 and one looks like a layer.

3 MR. LEVINE: Yes. Yes. Sometimes that is true and  
4 that has already been calculated.

5 THE COURT: It's not a --

6 MR. LEVINE: That testimony has already been  
7 calculated into what we objected to and what we didn't.

8 THE COURT: Okay, you've got my ruling. Your egg  
9 class has concluded. Okay, thank you for working out as much  
10 of this as you did.

11 MR. LEVINE: Just for clarity, the back half of 49.

12 THE COURT: Oh, leave that. Let it stay as it is.

13 MR. LEVINE: Thank you.

14 MR. PATTON: Is that 49 and 42A?

15 MR. LEVINE: Yes.

16 MR. PATTON: Did someone on your staff take very  
17 good notes?

18 MR. LEVINE: I think I did.

19 MR. PATTON: Okay. Your Honor, if we could have ten  
20 minutes, maybe 15 minutes to make sure we get the video.

21 THE COURT: Pick one.

22 MR. PATTON: 15. It will take a little longer to  
23 get it right.

24 THE COURT: As long as Mr. Coyle will tell our jury  
25 that I've been working on making their next time in the



1 courtroom more productive.

2 THE DEPUTY CLERK: Yes.

3 THE COURT: I'll be back.

4 MR. PATTON: Thank you, Your Honor.

5 (After recess:)

6 THE DEPUTY CLERK: All rise.

7 THE COURT: All right, we can bring the jury back.

8 THE DEPUTY CLERK: All rise.

9 (Jury in.)

10 THE COURT: Okay, you all may take your seats.

11 Ladies and gentlemen, as I told you, it's very difficult for  
12 me to guarantee some timing things, but we were working on  
13 making sure that this next segment of the trial is done in an  
14 efficient and smooth way, so that was why I intruded upon the  
15 time that I gave you and here we are.

16 So, Plaintiffs, you may proceed.

17 MR. PATTON: Your Honor, at this time, we call  
18 Mr. James Carlson to the stand.

19 THE COURT: Yes.

20 THE DEPUTY CLERK: Please remain standing and raise  
21 your right hand.

22 JAMES CARLSON,  
23 Called as a witness herein by the Plaintiffs, having been  
24 first duly sworn, was examined and testified as follows:

25 THE DEPUTY CLERK: Would you please have a seat.